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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

CITY OF EDMONDS,

*Petitioner,*

v.

WASHINGTON STATE BUILDING CODE  
COUNCIL, ET AL.

On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

BRIEF FOR AMERICAN ASSOCIATION ON MENTAL  
RETARDATION AND OTHER GROUPS LISTED ON INSIDE  
COVER AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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AND GROUPS LISTED ON  
INSIDE COVER

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## AMICI CURIAE

Advocacy, Inc.  
American Association on Mental Retardation  
American Counseling Association  
American Network of Community Options and  
Resources  
The Arc  
Arc-Allegheny  
The Arc of Pennsylvania  
Autism National Committee, Inc.  
Autism Society of America  
California Alliance for the Mentally Ill  
Center for Public Representation  
Disability Rights Education and Defense Fund, Inc.  
Disability Rights in Voter Empowerment  
The Joseph P. Kennedy, Jr. Foundation  
Legal Action Center  
National Alliance for the Mentally Ill  
National Association of People With AIDS  
National Association of Protection & Advocacy  
Systems  
National Association of State Mental Health Program  
Directors  
National Community Mental Healthcare Council  
National Mental Health Association  
The National Organization for Rare Disorders  
National Parent Network on Disabilities  
New York Lawyers for the Public Interest, Inc.  
Phoenix House  
Spina Bifida Association of America  
Sunrise Terrace, Inc.  
World Institute on Disability

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**WASHINGTON STATE BUILDING CODE  
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**BRIEF FOR AMERICAN ASSOCIATION ON MENTAL  
RETARDATION AND OTHER GROUPS LISTED ON INSIDE  
COVER AS AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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**INTEREST OF AMICI CURIAE**

Pursuant to Supreme Court Rule 37, *amici curiae* respectfully submit this brief in support of respondents Oxford House, Inc. and the United States. Consent to the filing of this brief has been granted by counsel for all parties and letters indicating such consent have been filed with the Clerk of this Court.

*Amici curiae* are professional provider and advocacy organizations dedicated to protecting the rights of and providing services to people with disabilities.<sup>1</sup> *Amici* believe that eliminating discrimination requires striking down local exclusionary zoning ordinances that limit housing options for people with disabilities. Restrictive laws, such as that at

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<sup>1</sup> The interest of each amicus is fully set forth in Appendix A.

issue in this case, are not exempt from scrutiny under federal housing laws.

### INTRODUCTION AND SUMMARY OF ARGUMENT

The Fair Housing Amendments Act of 1988 ("FHAA") broadly protects "individuals with handicaps," or disabilities, against housing discrimination. 42 U.S.C. § 3602(h) (1988). To remedy a long and well-documented history of segregation and discrimination, Congress emphatically required equal opportunity in housing for persons with disabilities. 42 U.S.C. § 3601 (1988); see H.R. Rep. No. 711, 100th Cong., 2d Sess. 13 [hereinafter "H. R. Rep. at \_\_\_"]. The FHAA outlaws overt discriminatory conduct as well as facially neutral rules and regulations on health, safety, and land use application, including zoning decisions and practices, that limit the ability of individuals with disabilities to live together in the residence and community of their choice. H. R. Rep. at 24. Congress recognized that rules, policies, and laws might have to be altered, waived, or abandoned so that persons with disabilities might enjoy equal access and opportunity. *Id.* at 25. Among the many barriers to equal housing opportunity for people with disabilities are zoning limitations on congregate living arrangements.

Oxford House residents, in recovery from drug or alcohol abuse, are among those protected by the FHAA. They choose to live together democratically in safe residential areas, which are essential to their continued recovery. (Pet. App. 8a-9a.) The City of Edmonds' zoning law, by restricting the number of unrelated people who may live in a single-family home, significantly limits the housing opportunities not just for persons in recovery, but for persons with all manner of disability: mental illness, mental retardation and other developmental disabilities, physical disability and AIDS and other disabling diseases.

The court of appeals correctly determined that the City of Edmond's zoning restriction is not exempt from the FHAA; Congress intended to exempt only those maximum occupancy restrictions that apply to *all* occupants, not solely unrelated occupants. Exempting the City's restriction would frustrate the FHAA's purpose to outlaw zoning practices

against people with disabilities. Congress enacted the FHAA to eradicate persistent discrimination against people with disabilities. The FHAA and other laws enacted by Congress embrace the national policy of normalization, promoting community integration and residential living for people with disabilities. Community integration has proven to be beneficial to both the disabled individual and the community. This movement toward community integration has created a large unmet need for community housing options. Through the FHAA, Congress sought to remove existing barriers to community integration, such as community prejudices and restrictive zoning ordinances, which exacerbate this unmet need. Consequently, *amici* ask the Court to affirm the decision below.

### ARGUMENT

#### I. THE COURT OF APPEALS CORRECTLY HELD THAT THE CITY OF EDMOND'S ZONING ORDINANCE IS NOT EXEMPT FROM THE FHAA

The City's zoning code permits families of both related and unrelated persons to live in single-family dwellings. City of Edmonds, Wash. Comm. Dev. Code ("ECDC") § 21.30.010. Related persons may live together in unlimited numbers, except by a square footage standard prescribed by the Uniform Housing Code.<sup>2</sup> (Pet. Br. at 7.) But unrelated persons living together, although recognized as a "family" under the code, are permitted only in groups of five or fewer. ECDC § 21.30.010. (JA 106-07.) This limitation prevented Oxford House from establishing a family unit for ten to twelve disabled persons in a large, six-bedroom house, which the owner had chosen to rent to Oxford House. (JA 106.)

Persons in recovery, and others with disabilities, often choose to live together in areas zoned for single families. Congregate or "group" homes generally consist of a small number of individuals with disabilities (two to

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<sup>2</sup> The Code requires that sleeping rooms have at least 70 square feet if occupied by two persons, and 50 additional square feet for each occupant in excess of two. UHC § 503(b) (1988). Pet. App. 21a.

approximately twelve) who live in a single-family home and interact as a single household,<sup>3</sup> and offer one kind of opportunity for people with disabilities to return to, or remain in, community life within a supportive, family atmosphere. These and other community living arrangements are vital to the integration into the community of persons with disabilities, and often have, as they do for Oxford House residents, therapeutic value. (See *infra* p. 16).

Because Oxford House "must have 6 or more residents to ensure financial self-sufficiency, to provide a supportive atmosphere for successful recovery, and to comply with federal requirements for the receipt of state start-up loans," the effect of the City's law is to bar Oxford House from any single-family residential zone in the City. (JA 107.) See, e.g., *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D.N.J. 1991). The City asserts that its zoning law does not violate the FHAA because it is exempt under 42 U.S.C. § 3607(b)(1) (1988) as a restriction on "the maximum number of occupants permitted to occupy a dwelling."<sup>4</sup>

The court of appeals correctly held that the City's zoning restriction was not an exempt maximum occupancy restriction. A law does not restrict occupancy, the court held, unless it applies to "all occupants, whether related or not." (Pet. App. 17a.)<sup>5</sup> This includes, for example, restrictions limiting a two-bedroom apartment to four occupants; a four-bedroom house to eight occupants; an apartment building to 300 occupants. Many other settings

<sup>3</sup> Daniel Lauber, *Report on Houston's Interim Regulatory and Zoning Ordinance Proposals for Group Homes, Halfway Houses, Hospices, Emergency Shelters, and Social Service Facilities* 8 (Aug. 18, 1992); Matthew B. Bogin, *Group Homes for People with Handicaps: Recent Developments in the Law*, 5 W. New Eng. L. Rev. 423 (1983).

<sup>4</sup> The exemption, labeled "numbers of occupants," provides: "Nothing in this subchapter limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1) (1988).

<sup>5</sup> See also *Oxford House-C v. City of St. Louis*, 843 F. Supp. 1556, 1573-74 (E.D. Mo. 1994); but see *Elliott v. City of Athens*, 960 F.2d 975, 981-83 (11th Cir.), cert. denied, 113 S. Ct. 376 (1992), discussed *infra* at page 8.

also have genuine maximum occupancy limits: elevators; restaurants; airplanes. An occupancy limit that applies to some, but not all, occupants of certain types of dwellings plainly does not regulate *maximum* occupancy.

In fact, the City *does* regulate maximum occupancy in single-family dwellings, through its housing code square footage requirements, which regulate density, health and safety. UHC § 503 (1991). This code applies to related and unrelated occupants and, if it is otherwise reasonable, would be exempt from the FHAA under section 3607(b)(1).<sup>6</sup>

However, the City's zoning law limits unrelated family members to five. This law has nothing to do with overcrowding or health or safety. Indeed, the City has stipulated that eight to twelve occupants in the Oxford House dwelling would have no greater impact on the City's services and infrastructure than a related family of equal size. (JA 110.) Such laws restricting unrelated families necessarily discriminate against people with disabilities, who make up large numbers of the population barred from living together as families in single-family dwellings.

The City's definition of "family" in its zoning restriction is ambiguous and, if uniformly enforced, would have incomprehensible results. The restriction, for example, might prohibit a family of six from hiring live-in, unrelated assistants to care for a disabled family member, since there would be more than five residents in the house, not all of whom would be related. Similarly, the City's restriction would prevent six unrelated elderly, long-time City residents from living together as a supportive group in one house in their own community.

As the court of appeals noted, interpreting the FHAA to exempt the City's restriction would frustrate the FHAA's

<sup>6</sup> "A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status." H. R. Rep. at 31.



purpose to prohibit discriminatory zoning practices against people with disabilities.<sup>7</sup> (Pet. App. 26a.) Zoning restrictions, whether explicitly discriminatory or facially neutral, that operate to exclude group homes for people with disabilities, or limit their ability to live in the residence and community of their choice cannot survive under the FHAA. H.R. Rep at 24.<sup>8</sup> State and local governments that use their authority to "restrict the ability of individuals with handicaps to live in communities," by imposing health, safety or land-use requirements on "congregate living arrangements among non-related people with disabilities," violate the law. Because the same requirements "are not imposed on families and groups of similar size of other unrelated people, [they] have the effect of discriminating against persons with disabilities." *Id.* at 23.<sup>9</sup>

<sup>7</sup> See also *Horizon House Developmental Servs. v. Township of Upper Southampton*, 804 F. Supp. 683, 695-97 (E.D. Pa. 1992), *aff'd mem.*, 995 F.2d 217 (3d Cir. 1993); *Easter Seal Soc'y v. Township of N. Bergen*, 798 F. Supp. 228, 234 (D.N.J. 1992); *Stewart B. McKinney Found. v. Town Plan & Zoning Comm'n*, 790 F. Supp. 1197, 1211-16 (D. Conn. 1992); *United States v. Borough of Audubon*, 797 F. Supp. 353, 359-62 (D.N.J. 1991).

<sup>8</sup> See *United States v. Badgett*, 976 F.2d 1176, 1179 (8th Cir. 1992) ("[T]he issue is not whether any house was made available . . . but whether she was denied the housing she desired on impermissible grounds.").

<sup>9</sup> Following the lead of Congress, some states have enacted legislation specifically targeted at zoning laws that distinguish between related and unrelated persons, thereby restricting opportunities to live in group homes in residentially zoned areas. See Cal. Gov't Code § 12995, § 18(b) note (West Supp. 1995) (rendering unlawful zoning laws that make housing opportunities unavailable by discriminating on the basis of familial status, including opportunities to reside in group homes in residential areas). Interpreting these provisions, the court in *Broadmoor San Clemente Homeowners v. Nelson*, 30 Cal. Rptr. 2d 316, 321 (Cal. Ct. App. 4th Dist. 1994) held that the Legislature intended to bring California housing legislation in full compliance with federal law, which "prohibits enforcement of a restrictive covenant which has the effect of excluding group homes for the handicapped." The court added, "[t]he legislative intent expressed as part of the amendments, specifically refers to the desirability of making group housing for the disabled available in residential areas." *Id.* Mass. Gen. L., ch. 40A, § 3 (1979) ("[L]ocal land use and health and safety laws, . . . shall not discriminate against a disabled person. Imposition of . . . requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size . . . shall constitute discrimination.").

Federal and state courts have recognized the FHAA's intent to eliminate barriers, even facially neutral ones, to community housing for people with disabilities.<sup>10</sup> Time and again, courts have emphasized the congressional purpose to integrate disabled persons "into the mainstream of society." See, e.g., *United States v. Scott*, 788 F. Supp. 1555, 1561 n.5 (D. Kan. 1992).<sup>11</sup>

Given these purposes, as well as the plain language of the FHAA, the City's restriction is not one involving "maximum occupancy" for a dwelling. The Ninth Circuit correctly recognized that the City's restriction cannot be reconciled with the "legislative history and purposes of the FHAA [which] demonstrate that Congress intended city zoning policies to reasonably accommodate handicapped persons." (Pet. App. 27a-28a.) Under the Act, people with disabilities constitute a protected class,<sup>12</sup> and discriminatory zoning ordinances against them must be reviewed with a higher level of scrutiny than applies under the rational basis test of the equal protection clause. *Horizon House*, 804 F. Supp. at 695 n.6; *United States v. Schulykill Township*, No. 90-

<sup>10</sup> See, e.g., *City of St. Louis*, 843 F. Supp. at 1579; *Potomac Group Home Corp. v. Montgomery County*, 823 F. Supp. 1285, 1301 (D. Md. 1993); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 465 (D.N.J. 1992).

<sup>11</sup> See also *Deep E. Tex. Regional Mental Health & Mental Retardation Servs. v. Kinnear*, 877 S.W.2d 550, 555 (Tex. App. — Beaumont 1994) (stating that "[a] cardinal purpose of the remedial, rehabilitative statutes [FHAA and ADA] is to surround the citizens of Texas who suffer from mental impairment with a residential family structure in his or her own familiar community"); *Rhodes v. Palmetto Pathway Homes*, 400 S.E.2d 484, 486 (S.C. 1991) ("The Fair Housing Amendments Act of 1988 articulates the public policy of the United States as being to encourage and support handicapped persons' right to live in a group home in the community of their choice.").

<sup>12</sup> Congress has the power to statutorily confer greater rights than those afforded by the Constitution. See *City of Rome v. United States*, 446 U.S. 156, 177-78 (1980); *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976).

2165, 1990 U.S. Dist. LEXIS 15555, at \*18 n.10 (E.D. Pa. Nov. 16, 1990).

In contrast, the Eleventh Circuit in *Elliott v. City of Athens*, 960 F.2d 975 (11th Cir.), cert. denied, 113 S. Ct. 376 (1992), merely applied this Court's constitutional precedents, under which a zoning ordinance that discriminated against disabled persons passed muster if it was not arbitrary, and if it bore a rational relation to a permissible state objective. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977); *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974). In doing so the Eleventh Circuit failed to appreciate that the passage of the FHAA had rendered the constitutional analysis inappropriate for persons with disabilities. It also ignored the overwhelming evidence that Congress intended precisely to reach zoning rules and practices, well-intentioned or not, that prevent people with disabilities from living in communities in a way compatible with their own needs. Judge Kravitch, in dissent, was correct: the court's result "cannot be reconciled with either the plain words of the statute or its legislative history." 960 F.2d at 985.

Because the City of Edmonds' restriction deprives people with disabilities of equal housing opportunity, the City must reasonably accommodate Oxford House residents. The "reasonable accommodation" requirement imposes an affirmative duty on municipalities to adjust their "traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling." H.R. Rep. at 25. Numerous courts have interpreted this requirement to mean that municipalities must change, waive or make exceptions to their zoning rules to afford people with disabilities equal opportunity to

housing.<sup>13</sup> The City could accommodate Oxford House either by changing its law, or by simply waiving the five-unrelated-person limit.

## II. THE FHAA MIRRORS NATIONAL RECOGNITION THAT PEOPLE WITH DISABILITIES NEED TO BE INTEGRATED INTO THE COMMUNITY

Congress enacted the FHAA in 1988, against the backdrop of a considerable body of knowledge about the history and nature of discrimination against persons with disabilities. See, e.g., *Alexander v. Choate*, 469 U.S. 287, 295 (1985). Whether in independent or assisted-living arrangements in apartments or single family dwellings, or in congregate or group home settings with peers, living in a community with a mix of people, both non-disabled and disabled, is now accepted to be the healthiest and most advantageous housing for persons with disabilities. It is unquestionably what people with disabilities want. It is also generally regarded by experts as the most advantageous arrangement for society and the community.

### A. History of Prejudice and Discrimination Against People With Disabilities

Beginning in the late 19th century and continuing into the middle of this century, the official policy of the United States was to segregate people with disabilities from "normal" society.<sup>14</sup> Although this policy has abated

<sup>13</sup> See, e.g., *Township of Cherry Hill*, 799 F. Supp. at 462-63; *Horizon House*, 804 F. Supp. 699-700; *United States v. City of Taylor*, 798 F. Supp. 442, 447-48 (E.D. Mich. 1992); *Easter Seal Soc'y v. Township of N. Bergen*, 798 F. Supp. 228 (D.N.J. 1992); *Stewart B. McKinney Found.*, 790 F. Supp. at 1221-22; *Parish of Jefferson v. Allied Health Care, Inc.*, No. 91-1199, 1992 U.S. Dist. LEXIS 9124, at \*13-21 (E.D. La. June 10, 1992); *United States v. Village of Marshall*, 787 F. Supp. 872, 876-79 (W.D. Wis. 1992); *City of Plainfield*, 769 F. Supp. at 1344-45; *United States v. Puerto Rico*, 764 F. Supp. 220, 224 (D.P.R. 1991); *Devereux Found., Inc. v. O'Donnell*, No. 89-6134, 1990 U.S. Dist. LEXIS 11831, at \*13 nn. 12-13 (E.D. Pa. Sept. 6, 1990).

<sup>14</sup> See Timothy M. Cook, *The Americans With Disabilities Act: The Move to Integration*, 64 Temp. L. Rev. 393, 399 (1991); Jonathan C. Drimmer, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 U.C.L.A. L. Rev. 1341, 1342 (June 1993); Stanley S. Herr, *Rights and Advocacy for Retarded*



somewhat, people with disabilities continue to be stigmatized and pitied, and continue to experience discrimination in all facets of life, including housing.

During the early 1900s, in virtually every state, people with disabilities, particularly children, were declared unfit for companionship, a blight on society, and "'a most baneful evil.'" Timothy M. Cook, *The Americans With Disabilities Act*, 64 Temp. L. Rev. at 400-01 (quoting various state laws and official state reports from the early part of this century). Those with severe disabilities were considered "'a defect . . . [that] wounds our citizenry a thousand times more than any plague.'" *Id.* More than half the states enacted eugenic sterilization and segregation laws to prevent the propagation of "degenerate offspring" and to isolate "inferior beings" from the rest of society. *See id.* at 401-03. Individuals with mental retardation, mental illness and other disabilities were viewed as "abnormal" and "dangerous."<sup>15</sup> They were warehoused in large institutions and hospitals where they could be "treated" and "confined." The so-called experts and scientists of the day justified segregation based not only on the need to protect society from people with disabilities, but also on the beneficial effects of institutionalization. Segregating people with disabilities was considered "'consistent with a deep and abiding charity [that] . . . permits all to live under those circumstances best suited to

People 18-29 (1983); *City of Cleburne v. Cleburne Living Center*, 473 U.S. 423, 460-63 (1985) (Marshall, J., concurring in part and dissenting in part).

<sup>15</sup> Justice Marshall recounted this history in the *City of Cleburne*:

Fueled by the rising tide of Social Darwinism, the "science" of eugenics, and the extreme xenophobia of those years, leading medical authorities and others began to portray the "feeble-minded" as a "menace to society and civilization . . . responsible in large degree for many, if not all, of our social problems." A regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow.

473 U.S. at 461-62 (Marshall, J., concurring in part and dissenting in part) (footnote and citations omitted). *See generally* Timothy M. Cook, *The Americans With Disabilities Act*, 64 Temp. L. Rev. at 399-414 (describing nearly universal state segregation of persons with disabilities).

make each useful and happy.'" *Id.* at 406 (quoting C.S. Yoakum, *Care of the Feeble-minded and Insane in Texas*, Bull. U. Tex. 83 (Nov. 5, 1914)). The federal government fully concurred with these state policies. *Id.* at 401. Similarly benign rationale were used to justify racial segregation.

## B. "Normalization" – The Principle Behind Community Integration

In the 1950s, professionals and policymakers recognized that a policy of segregation and institutionalization not only impeded the progress of those confined, but also violated basic notions of decency.<sup>16</sup> A national policy of community living developed, based in part on the widespread recognition that people with disabilities are injured by unnecessary institutionalization and segregation. These injuries generally are attributed to the isolation of people from "the normal rhythm of daily routines of occupation, leisure, and personal life."<sup>17</sup> Evidence has shown that motor learning skills, communication skills and general social competency of people are negatively affected by institutional settings.<sup>18</sup>

Accordingly, the concept of "normalization" – the idea that people with disabilities do better when they live as part of society rather than separate from it – has influenced national policy on disabilities for the past thirty years.<sup>19</sup> The

<sup>16</sup> Arlene S. Kanter, *A Home of One's Own: The Fair Housing Amendments Act of 1988 and Housing Discrimination Against People With Mental Disabilities*, 43 Am. U. L. Rev. 925, 929 (1994).

<sup>17</sup> Bengt Nirje, *The Normalization Principle and its Human Management Implications*, in President's Committee on Mental Retardation, *Changing Patterns in Residential Services for the Mentally Retarded* 179, 186-87 (R. Kugel & W. Wolfensberger eds. 1969)).

<sup>18</sup> Daniel Lauber, *Report on Houston's Interim Regulatory and Zoning Ordinance Proposals for Group Homes, Halfway Houses, Hospices, Emergency Shelters, and Social Service Facilities* at 6 (citing Jerri L. Phillips & Earl E. Balthazar, *Some Correlates of Language Deterioration in Severely and Profoundly Retarded Long-Term Institutionalized Residents*, 83 Am. J. Mental Deficiency 402-08 (1979)).

<sup>19</sup> In 1963, President Kennedy announced a change of direction for the country by setting forth a national policy of community integration. The President declared that "[w]e must act . . . to retain in and return to the

core principle of normalization is that individuals with disabilities are entitled to the cultural opportunities, surroundings, experiences, risks, and associations enjoyed by people without disabilities. In housing, normalization means living in a normal size home in a residential neighborhood that offers opportunities for normal societal integration and interaction.<sup>20</sup> Living with a group of unrelated peers is one way that people with disabilities can enjoy the benefits of community living.

### C. Development of National Policy of Community Living

#### 1. Community Living

The national policy of normalization underlies a series of laws that encouraged and developed community living options. Congress took the first step in that direction by enacting the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963,<sup>21</sup> which

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community the mentally ill and mentally retarded [in order] to restore and revitalize their lives . . . ." President's Special Message to Congress on Mental Illness and Mental Retardation, 88th Cong., 1st Sess., reprinted in 1963 U.S.C.A.N. 1466, 1476-77.

<sup>20</sup> Justice Marshall explained the function and importance of group homes for people with mental disabilities, which applies equally to all other disabilities:

For retarded adults, this right [to establish a home] means living together in group homes, or as deinstitutionalization has progressed, group homes have become the primary means by which retarded adults can enter life in the community. . . . Excluding group homes deprives the retarded of much of what makes for human freedom and fulfillment — the ability to form bonds and take part in the life of a community.

*City of Cleburne*, 473 U.S. at 461 (Marshall, J., concurring in part and dissenting in part).

<sup>21</sup> Pub. L. No. 88-164, 77 Stat. 282, *repealed by* Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 902(e)(2)(B), 95 Stat. 357, 560. The 1981 Act amends the Medicaid program to reimburse states for certain home or community-based services for people with mental disabilities as alternatives to institutions. The community services waiver provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, §§ 2176, 2177 (a), 95 Stat. 357, 812-13 (codified at 42 U.S.C. § 1396n(c) (1988 & Supp. V 1993)), allows states to apply for a waiver of certain Medicaid requirements in order to offer home and community-based services. See also Social Services Amendments of 1974, Pub. L. No.

provided federal funding for mental health services in the community.

The Developmentally Disabled Assistance and Bill of Rights Act of 1975, Pub. L. No. 94-103, 89 Stat. 486, more specifically declared that "[t]he treatment, services, and habilitation for a person with developmental disabilities should be . . . provided in the setting that is least restrictive of the person's personal liberty." 89 Stat. at 502. Congress accompanied the Act with funding for community-based services, declaring that institutional care was, in most cases, "inappropriate and inhumane."<sup>22</sup> In 1987, Congress amended the Act to state more forcefully the "national interest" of promoting the right and opportunity for people with developmental disabilities to be part of the community, "to make decisions for themselves and to live in typical homes and communities where they can exercise their full rights and responsibilities as citizens."<sup>23</sup>

Congress continued to promote community living through funding initiatives that targeted the special needs of previously overlooked people. With the passage of the Anti-Drug Abuse Act of 1988, 42 U.S.C. §§ 300x-1 to -64 (1988 & Supp. V 1993), Congress endorsed residential group homes for recovering addicts and alcoholics. In 1990, Congress enacted the National Affordable Housing Act, which provides rental housing assistance and supportive services to homeless people with disabilities. *Id.* § 11403 (Supp. V 1993).

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93-647, § 2001, 88 Stat. 2337 (codified at 42 U.S.C. § 1397 (1988)) (favoring community-based care over institutional care); Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 210(b), 88 Stat. 633 (codified at 12 U.S.C. § 1701q(d)(4) (1988)) (amending Housing Act to include subsidies for construction of residential facilities for developmentally disabled persons).

<sup>22</sup> H.R. Rep. No. 58, 94th Cong., 1st Sess. 15.

<sup>23</sup> 42 U.S.C. §§ 6000(a)(4) (1988), (a)(9) (Supp. V 1993) (emphasis added). Congress amended the Act again in 1990, emphasizing that one of the stated purposes of the Act was "to promote the inclusion of all persons with developmental disabilities, including persons with the most severe disabilities, in community life." *Id.* § 6009(b)(5) (Supp. V 1993).



The development of state policy promoting community living paralleled that of the federal government. States throughout the country adopted community integration programs for people with mental retardation and developmental disabilities.<sup>24</sup> Indeed, in the thirty-four year period from 1960 through 1993, twenty-seven states closed one or more large state mental retardation/developmental disability facilities.<sup>25</sup>

## 2 Anti-Discrimination Laws

Federal and state recognition of a policy of community integration, standing alone, did not succeed in changing entrenched attitudes toward people with disabilities. The failure of the public to accept people with disabilities into various aspects of community life, due to stereotypes and prejudice, threatened to undermine the goals of integration.

The first federal law to prohibit discrimination against people with disabilities was the Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796i (1988 & Supp. V 1993). The Act's stated purpose was to "develop and implement . . . comprehensive and coordinated programs of vocational rehabilitation and independent living, for individuals with handicaps in order

<sup>24</sup> See, e.g., Texas Mental Health and Mental Retardation Act of 1965, Tex. Rev. Civ. Stat., art. 5547-201-206, *repealed by* Acts 1991, ch. 76, § 19; Texas Mentally Retarded Persons Act of 1977, Tex. Rev. Civ. Stat., art. 5547-300, *repealed by* Acts 1991, ch. 76, § 19; N.Y. Mental Hyg. Law §§ 41.33, 41.34; 41.36 and 41.37 (McKinney 1988); Georgia Community Services Act for the Mentally Retarded, Ga. Code Ann. § 37-52 (Michie 1982). For example, the Georgia statute states: "The primary purpose of this chapter shall be to provide community-based alternatives to total institutional care so that mentally retarded individuals can continue to live in their home communities." See also Appendix B, *infra*, which provides a more complete listing of state statutes adopting policies of community residential living for people with disabilities.

<sup>25</sup> See David L. Braddock et al., *The State of the States in Developmental Disabilities* 12 (Paul H. Brooks Publishing Co.) (1990); Troy Managan et al., University of Minnesota, College of Education, *Residential Services for Persons with Mental Retardation and Related Conditions: Status and Trends Through 1993* 11-12, 19 (June 1994). The placement rate of persons with mental retardation and related conditions in all large state facilities declined from 115.8 per 100,000 of the general population in 1965 to 28.6 per 100,000 in 1993 — less than one-quarter of the 1965 placement rate. *Id.* at 13.

to maximize their . . . integration into the workplace and the community." *Id.* § 701 (1988). As this Court recognized in *School Board of Nassau County v. Arline*, Congress was concerned with "protecting [people with disabilities] against discrimination stemming not only from simple prejudice, but also from 'archaic attitudes and laws' and from 'the fact that the American people are simply unfamiliar and insensitive to the difficulties confront[ing] individuals with handicaps.'" 480 U.S. 273, 279 (1987).

States also began to confront widespread reliance on local zoning laws to exclude group homes for people with disabilities, by enacting preemptive laws limiting local discretion over zoning decisions affecting group homes. By 1987, thirty-four states had enacted legislation authorizing, to varying degrees, the location of group homes in residential areas.<sup>26</sup>

In 1988, Congress enacted the FHAA, establishing a strong national policy prohibiting housing discrimination by requiring reasonable accommodation for the special housing needs of those with disabilities. Congress recognized that all groups of people with disabilities had suffered discrimination because of "prejudice and aversion — because they make non-handicapped people uncomfortable." H. R. Rep. at 18. Stereotypes and prejudice may no longer be used to deny "critically needed" housing to people with disabilities. "The right to be free from housing discrimination is essential to the goal of independent living." H.R. Rep. at 18.<sup>27</sup> The Act

<sup>26</sup> See Lester D. Steinman, *The Effect of Land-Use Restrictions on the Establishment of Community Residences for the Disabled: A National Study*, 19 Urb. Law. 1, 18-20 (Winter 1987) (surveying preemption laws). The state preemption laws varied with regard to the disabilities they cover. Although virtually every state law covered group homes for peoples with developmental disabilities, only a portion covered people with mental illness. *Id.*

<sup>27</sup> Congress reiterated the goal of "provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" in all of its forms, including the practices of "isolat[ion] and segrega[tion]" with the passage of the

repudiates the use of stereotypes and ignorance, and mandates that people with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

*Id.* (footnote omitted). In sum, like the Rehabilitation Act of 1973, the FHAA "is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream." *Id.*

### III. EXPERIENCE HAS DEMONSTRATED THE BENEFITS OF COMMUNITY INTEGRATION

There is now substantial evidence, certainly supported by the experience of all *amici curiae*, that when people with disabilities live in decent housing in community residential settings, they benefit significantly. It is also clear that the surrounding community benefits in a variety of ways.

#### A. Benefits of Community Living

People with disabilities can reap the benefits of community living in a variety of ways. Some live independently in the community. Others live in their own apartments or homes with support as needed from nearby or on-call staff. Some live in family care homes, with private homeowners who act as "surrogate parents" for one to six persons with disabilities. Others live in small intermediate care facilities, public or private, that provide twenty-four-hour care to persons with developmental disabilities and stabilized health problems. Barbara Wright, National Conference of State Legislatures, *What Legislators Need to*

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American with Disabilities Act. 42 U.S.C. § 12101(a)(2), 12101(b)(1) (Supp. V 1993).

*Know About Mental Retardation and Developmental Disabilities* 7 (Feb. 1990). The group home, in which peers live together in a mutually supportive environment, is one model that is highly beneficial for certain groups of people with disabilities, like Oxford House residents.

The development of group homes for individuals in recovery became national policy with the passage of the Anti-Drug Abuse Act of 1988, which requires states to provide funds to start self-run, self-supporting homes that are alcohol and drug free. 42 U.S.C. § 300x-25 (Supp. V 1993). The law is based on the successful fifteen-year experience of the national network of self-help Oxford Houses.<sup>28</sup> All evidence indicates that the Oxford House model is extremely effective.<sup>29</sup>

The location of a home in a residential neighborhood is critical to its success. A survey of group homes sponsored by the U.S. General Accounting Office in 1983 found that the most important siting factors were that the home be in a safe, stable neighborhood with a high percentage of single-family residences.<sup>30</sup> Residents in middle to higher income

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<sup>28</sup> The legislation reflects Congress's view that "after detoxification and in-patient rehabilitation many [people] need to live in an alcohol and drug free environment for some time in order to avoid [a] relapse," that Oxford Houses "provide the kind of support necessary for [these] individuals," and that such housing can therefore provide "the missing link in recovery from addiction." 134 Cong. Rec. E3732, E3733 (daily ed. Nov. 10, 1988) (remarks of Rep. Madigan).

<sup>29</sup> One study surveying six Oxford Houses published in 1991 showed that while residents continued to live in Oxford House, their relapse rate was less than 10%; 80% viewed Oxford House as important to their continued sobriety. William H. Spillane & Dean Frederick Ahearn, Catholic University of America, *Final Report: Developmental Exploratory Study of Six Newly Formed Group Recovery Homes* 55 (Feb. 15, 1991). Similarly, a study of the New Jersey Oxford Houses showed that approximately 80% remained alcohol and drug free while living at Oxford House. J. Paul Molloy, Oxford House, Inc., *The New Jersey State Network of Oxford Houses* 25 (1992).

<sup>30</sup> U.S. General Accounting Office, *An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* App. I at 8 (Aug. 17, 1983). The GAO Report found that most group homes for people with mental disabilities were single family, detached houses. *Id.* at 7-8.



communities have higher levels of social adjustment and community integration, suggesting a higher quality physical setting, and also provide more integrating services and resources.<sup>31</sup> Not surprisingly, residents who are isolated in poor neighborhoods with high crime rates generally have little contact with their community.<sup>32</sup> It likewise is difficult, if not impossible, to create a home in a commercial or industrial area.<sup>33</sup> For those with addictions, group homes located in single-family neighborhoods, away from liquor stores and illicit drug activity, play a "crucial role" in an individual's recovery by "promoting self-esteem, helping to create an incentive not to relapse." *Township of Cherry Hill*, 799 F. Supp. at 453.

The proven benefits of community living are not surprising. When people with disabilities live in the community, they are able to develop a meaningful life outside in the neighborhood--they attend movies, enjoy shops, take walks in parks, and visit friends.<sup>34</sup> The scientific

<sup>31</sup> John T. Hull & Joy C. Thompson, *Factors Which Contribute to Normalization in Residential Facilities for the Mentally Ill*, *Community Mental Health J.* 107, 111 (Summer 1981); see also Frank Baker & Charlene Douglas, *Housing Environments and Community Adjustment of Severely Mentally Ill Persons*, 26 *Community Mental Health J.* 497, 503-04 (Dec. 1990) (A study examining relationships between the quality and appropriateness of housing environments and community adjustment of 729 deinstitutionalized severely mentally ill clients found that quality and appropriateness of housing environments significantly affect aspects of client's community adjustment outcomes over a nine-month period, including global level of functioning, degree of maladaptive behavior, and client's perceived quality of life); Mary Earls & Geoffrey Nelson, *The Relationship Between Long-Term Psychiatric Clients' Psychological Well-Being and Their Perceptions of Housing and Social Support*, 16 *Am. J. Community Psychol.* 279, 290-91 (1988) (study of 89 people between the ages of 18 and 65 who had been hospitalized for psychiatric problems at least twice showed that poor quality housing is strongly related to clients' perceptions of their psychological well-being).

<sup>32</sup> Martin Jaffe & Thomas P. Smith, *Siting Group Homes for Developmentally Disabled Persons at 8* (citing Sylvia Bercovici, *American Ass'n on Mental Deficiency, Qualitative Methods and Cultural Perspectives in the Study of Deinstitutionalization*, Monograph 4 (R. Bruininks ed. 1981)).

<sup>33</sup> Daniel Lauber & Frank S. Bangs, Jr., *American Society of Planning Officials, Zoning for Family and Group Care Facilities* 8, 10 (Mar. 1974).

<sup>34</sup> See R. Horner et al., *Oregon Developmental Disabilities Office, An Activity Based Analysis of Deinstitutionalization: The Effects of Community Re-*

literature on mental retardation, for example, overwhelmingly shows that family-style community homes improve adaptive behavior; increase social participation, independence, and control over decisions; and improve the perceived quality of life. See Appendix C, *infra*. Similarly, group homes for people with HIV or AIDS can "literally extend lives by providing a safe environment, giving residents an opportunity to address their needs, and facilitating the delivery of health care and other services."<sup>35</sup> In fact, numerous studies have disproved one of the most common misperceptions -- that people with very limited functional abilities are not suitable for the community.<sup>36</sup>

Community living also provides a critical alternative to hospital-based care, and even to family care by relatives, especially for those with severe mental illness who require assisted living.<sup>37</sup> Studies overwhelmingly show that community-based treatment is more effective than hospital-based treatment in helping people with psychiatric

*Entry on the Lives of Residents Leaving Oregon's Fairview Training Center* (1988) (cited in Timothy M. Cook, *The Americans With Disabilities Act*, 64 *Temp. L. Rev.* at 450); James W. Conroy & Valerie J. Bradley, Temple University Developmental Disabilities Center, Philadelphia, Human Services Research Institute, Boston, *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis* (Mar. 1985).

<sup>35</sup> Howard Burchman & David Terrio, *Review of Breaking New Ground*, 8 *AIDS & Pub. Pol'y J.* at 196.

<sup>36</sup> James W. Conroy et al., *Connecticut Department of Mental Retardation, 1990 Results of the CARC v. Thorne Longitudinal Study* (Report No. 10) 41 (Jan. 1991); James W. Conroy & Valerie J. Bradley, *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis*. See Timothy M. Cook, *The Americans With Disabilities Act*, 64 *Temp. L. Rev.* at 444 (citing James W. Conroy et al., *A Matched Comparison of the Developmental Growth of Institutionalized and Deinstitutionalized Mentally Retarded Clients*, 86 *Am. J. Mental Deficiency* 581 (1982)).

<sup>37</sup> Francine Cournos, *The Impact of Environmental Factors on Outcome in Residential Programs*, 38 *Hosp. & Community Psychiatry* 848, 849 (Aug. 1987) (discussing that residential programs are important because patient and family may wish to separate from each other, or they may be unable to live together).



disabilities become employed, gain re-entry into the community, and reduce the use of medication.<sup>38</sup>

As Congress recognized, community living substantially furthers the national policy of normalization by enabling people with disabilities to enter or remain in community housing. The substantial benefits of such housing are measurable by sophisticated surveys and by simple expressions of happiness. Although the needs from one disability group to another differ, the basic concept of establishing a small home in a residential neighborhood where its residents can live what society perceives as a "normal" everyday life, has proven successful time and again.

### B. Benefit to the Community

It would be a mistake to assume that normal housing for people with disabilities benefits only the residents; the community also benefits. Interaction increases social acceptance, which leads to greater tolerance for diversity by those without disabilities.<sup>39</sup> The positive community impact of integration was an intended statutory objective, as stated by one of the FHAA's sponsors: "the attitudes, stereotypes, and misconceptions of the rest of society about people with disabilities are not going to change until those of us without disabilities have the opportunity to be around people

<sup>38</sup> Paul J. Carling, *Major Mental Illness, Housing, and Supports*, 45 Am. Psych. 969, 971 (Aug. 1990) (citing C.A. Kiesler, *Mental Hospitals and Alternative Care: Noninstitutionalization as Potential Public Policy for Mental Patients*, 37 Am. Psychologist 349-60 (1982); P. Braun et al., *Overview: Deinstitutionalization of Psychiatric Patients - A Critical Review of Outcome Studies*, 138 Am. J. Psychiatry 736-49 (1981); D. Dellario & W. Anthony, *On the Relative Effectiveness of Institutional and Alternative Placements of the Psychiatrically Disabled*, 37 J. Soc. Issues 21-33 (1981)).

<sup>39</sup> See Timothy M. Cook, *The Americans With Disabilities Act*, 64 Temp. L. Rev. at 448-49 (citing Susan M. McHale & Rune J. Simeonsson, *Effects of Interaction on Nonhandicapped Children's Attitudes Toward Autistic Children*, 85 Am. J. Mental Deficiency 18 (1980)).

with them -- as classmates, as colleagues, and as neighbors."<sup>40</sup>

Notably, integration resulting in large part from the FHAA has helped to change public attitudes in those immediate neighborhoods where group homes have located. Neighbors see over time that their fears of a decline in property values, increase in crime, or negative impact on the character of the neighborhood, were unjustified.<sup>41</sup> For example, of the thirty-six percent of the neighbors who opposed five group homes for the mentally ill before they were built on Long Island, only two percent continued to oppose the homes two to three years later.<sup>42</sup>

Effective housing for former addicts and alcoholics, enabling them to be productive members of society, also benefits the public fisc by increasing taxable earnings, and by reducing crime, birth defects, broken families, and hospitalization.<sup>43</sup> Moreover, some community living

<sup>40</sup> 134 Cong. Rec. S10,552 (daily ed. Aug. 2, 1988) (statement of Sen. Weicker) (emphasis added); see also *Baxter v. City of Belleville*, 720 F. Supp. 720, 734-35 (S.D. Ill. 1989) ("The Court finds that the public interest can best be served if discriminatory actions based on irrational fears, piecemeal information and 'pernicious mythologies' are restrained.").

<sup>41</sup> See Tom Pelton, *Federal Law is Letting Group Homes Tiptoe into Town; New Rules Open Door for Mentally Disabled*, Chicago Tribune, Oct. 4, 1994, at 1 (one former opponent of a group home for individuals with mental illness admitted, "[i]t's worked out real well. They've improved the property, and we haven't had any incidents."); Michael Winerip, *A Home for Anthony*, N.Y. Times, June 5, 1994, at 50 (Glen Cove's Mayor, who fought hard to block a house for people with mental illness, acknowledged, "the fact of the matter is, it hasn't been a problem"). In one community, a high school club "adopted" a group home near the school and got involved in helping the residents of the house. Peter Marks, *Unwelcomed Neighbors Long Island a Leader in Thwarting Group Homes for Mentally Ill*, Newsday, May 20, 1990, at 5.

<sup>42</sup> Theresa Tighe & Melanie Robinson, *Group Home for Alzheimer's Patients is Hard Sell; Neighbors in Ballwin Protest Despite Owners' Assurances*, St. Louis Post-Dispatch, Sept. 9, 1994, at 1D.

<sup>43</sup> Thirty-one percent of Oxford House residents surveyed in 1990 reported being homeless at the time they came to live in Oxford House; 77% of the residents surveyed reported being homeless at some time during their lives. William H. Spillane & Dean Frederick Ahearn, *Final Report: Developmental Exploratory Study* at 33, 37.

arrangements result in lower health care costs for many people with disabilities. For example, community living arrangements for the frail elderly or people with HIV/AIDS can replace hospital or nursing home care and reduce greatly the corresponding costs of such care.

In sum, all available evidence shows that community living is good for persons with disabilities and for the community and society at large as well.

#### IV. THE FHAA WAS INTENDED TO ELIMINATE BARRIERS TO COMMUNITY INTEGRATION

The shift from institutionalization to normalization and community integration has created a growing need for community housing opportunities, including group homes. Community prejudices and exclusionary zoning practices still operate to keep such housing in short supply.

##### A. The Need for Housing for People with Disabilities

While availability of housing for people with disabilities (both state-operated and private) has increased substantially over time (especially for those with developmental disabilities), there still is not nearly enough to meet existing needs. Indeed, a recent HUD report found that nonelderly people with disabilities had very high rates of unmet housing need (47%), and are most likely to live in severely inadequate housing.<sup>44</sup> A study conducted from 1990-92 by the Center on Residential Services and Community Living reported that 60,876 people with mental

<sup>44</sup> U.S. Dep't of Housing & Urban Development, *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991. A Report to Congress* 13, 44 (June 1994). Because data only includes individuals who receive SSI, the Report acknowledged that it probably undercounts the number of households with disabled individuals.

retardation/developmental disabilities in thirty-seven states were waiting for residential services.<sup>45</sup>

For people with mental illness, the need is equally great. For example, in 1950, there were roughly 90,000 people living in New York's state mental hospitals compared to 10,000 today. Yet, the 80,000 hospital beds that were eliminated have been replaced by just 12,536 state-financed group home and apartment beds.<sup>46</sup> Due to the lack of appropriate housing, as many as one-third of inpatients remain in psychiatric hospitals unnecessarily; others cycle through emergency rooms and hospitals in costly and often inappropriate stays.<sup>47</sup> The unavailability of appropriate community housing also results in unresolved psychiatric problems, which, in turn, can lead to homelessness.<sup>48</sup> The state of homelessness may exacerbate the symptoms of mental illness—further distancing a person from the chance of a decent life.<sup>49</sup>

The lack of adequate housing in a drug and alcohol-free environment for individuals recovering from substance abuse is a "major, major problem." *Township of Cherry Hill*, 799 F. Supp. at 456 n.12. The executive director of the New Jersey Governor's Council on Alcoholism and Drug Abuse testified that, "for alcoholics and drug addicts, finding adequate housing in a drug and alcohol-free neighborhood

<sup>45</sup> University of Minnesota, College of Education, *Policy Research Brief. Adults with Mental Retardation and Other Developmental Disabilities Waiting for Community-Based Services in the U.S.* 4 (Aug. 1992).

<sup>46</sup> Michael Winerip, *A Home for Anthony*, N.Y. Times, June 5, 1994, at 50.

<sup>47</sup> Paul J. Carling, *Major Mental Illness, Housing, and Supports*, 45 Am. Psychol. 969.

<sup>48</sup> Studies show that one out of every three homeless people in the United States suffer from a severe mental illness, such as schizophrenia or manic-depressive illness. Alan I. Leshner, Report of the Federal Task Force on Homelessness and Severe Mental Illness, *Outcasts on Main Street* 1 (1992) (citing R.C. Tessler & D.L. Dennis, National Institute of Mental Health, *A Synthesis of NIMH-Funded Research Concerning Persons Who Are Homeless and Mentally Ill* (1989)).

<sup>49</sup> Arlene S. Kanter, *Homeless Mentally Ill People: No Longer Out of Sight and Out of Mind*, 3 N.Y.L. Sch. J. Hum. Rts. Annual 331, 333 (Spring 1986).



after a rehabilitation program is more difficult than getting into the rehabilitation program itself." *Id.*

The lack of affordable and appropriate housing is likewise an acute crisis for people living with AIDS. It is estimated that from one-third to one-half of all people with AIDS are either homeless or in imminent danger of becoming so.<sup>50</sup> Approximately thirty percent of all people with HIV disease in acute care hospitals are there because there is no appropriate community housing or program for them.<sup>51</sup> In short, the housing needs of people with disabilities are not being met.

### B. Community Prejudices

A number of factors, such as increasing demand and limited state and federal funding, contribute to the unmet housing needs. But community opposition and restrictive zoning ordinances play a central role in preventing people with disabilities from living in the community.<sup>52</sup> As the American Psychiatric Association's task force on homelessness concluded:

Since the beginning of deinstitutionalization, there has been a great deal of resistance to the development of community residences for the mentally disabled. Many citizens do not oppose the theory of community care for the mentally ill, but when faced with the reality, they often oppose

<sup>50</sup> Howard Burchman & David Terrio, *Review of Breaking New Ground: Developing Innovative AIDS Care Residences*, 8 AIDS & Pub. Pol'y J. 195, 196 (1993) (citing National Commission on AIDS, *Housing and the HIV/AIDS Epidemic* 7 (1993)).

<sup>51</sup> *Id.*; see also Stewart B. McKinney Found., 790 F. Supp. at 1202.

<sup>52</sup> In fact, social scientists have developed a hierarchy of disabilities, ranking them in order of their social acceptance. See Michael Dear, Robert Wood Johnson Foundation, *Gaining Community Acceptance* 16-20 (1990). Not surprisingly, recovered substance abusers, like the occupants of Oxford House, and people with AIDS, have been found to have the least socially acceptable disabilities. The level of outcry against group homes for persons with disabilities correlates directly to the social acceptability of the resident population. *Id.*

the siting of facilities near their own business or residence.<sup>53</sup>

This attitude has been commonly referred to as "NIMBY" or "not in my backyard." As the nation moved toward deinstitutionalization, advocates for community integration encountered NIMBY attitudes when people with any kind of disability attempted to site group homes in a community.<sup>54</sup>

Opposition to community integration typically has centered around three general issues. First, communities argue that integration will cause property values to decrease. Second, they fear that people living in such residences will commit crimes and be dangerous and unpredictable. Finally, communities assert that group homes will not be maintained properly and that residents will be dirty or unkempt and will engage in antisocial behavior such as loitering, public urination or defecation, and aggressive panhandling.<sup>55</sup> Such aberrant behavior, communities argue, will unalterably change the character of their quiet residential neighborhood.

Study after study has conclusively proven that each of these fears is unfounded.<sup>56</sup> There is no evidence that

<sup>53</sup> Nora Richter Greer, *The Search for Shelter* 37 (1986) (quoting American Psychiatric Ass'n, *A Task Force Report of the American Psychiatric Ass'n. Homeless Mentally Ill* (1984)).

<sup>54</sup> See generally Carol K. Sigelman et al., *Community Reactions to Deinstitutionalization*, 45 J. Rehabilitation 52, 52 (Jan./Feb./Mar. 1979); Alan I. Leshner, *Outcasts on Main Street* at 24-26.

<sup>55</sup> Cindy Lee Soper, Note, *The Fair Housing Act Amendments of 1988: New Zoning Rules for Group Homes for the Handicapped*, 37 St. Louis U. L.J. 1033, 1041 (Summer 1993); Daniel Lauber & Frank S. Bangs, Jr., *American Society of Planning Officials, Zoning for Family and Group Care Facilities* at 8-10; Michael Dear, *Gaining Community Acceptance* at 11-12; Robert L. Schonfeld, "Five-Hundred-Year Flood Plains" and Other Unconstitutional Challenges to the Establishment of Community Residences for the Mentally Retarded, 16 Fordham Urb. L.J. 1, 8 (1988); Disability Law Center, Inc., *The Right of Persons with Disabilities to be Free from Discrimination in Housing Pursuant to the Federal Fair Housing Law and Other Federal Statutes* 92-94 (June 1990).

<sup>56</sup> Community Residences Information Services ("CRISP"), "There Goes the Neighborhood . . ." *A Summary of Studies Addressing the Most Often Expressed Fears About the Effects of Group Homes on Neighborhoods in Which*

property values surrounding group homes decrease or that crime increases.<sup>57</sup> Indeed, group homes tend to be maintained as well as, or better than, other residences in the neighborhood.<sup>58</sup> Nonetheless, vocal opposition has pressured local zoning officials to block proposed group homes and has scared away group home residents.<sup>59</sup> Expensive legal battles often delay the opening of a group home for years.<sup>60</sup> The operation of some group homes has been obstructed by arson and vandalism. For example, six

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*They Are Placed: Declining Property Values, Crime, Deteriorating Quality of Life and Loss of Local Control* (Oct. 1990). Since 1983, CRISP has reviewed and summarized major studies of the impact of group homes on neighborhoods. In 1990, 57 of the 58 studies CRISP reviewed found no concrete evidence to support negative attitudes. "The presence of group homes in all the areas studied has not lowered property values or increased turnover, not increased crime, not changed the character of the neighborhood. The homes have not deteriorated or become conspicuous institutional landmarks. Communities have come to accept them, and group home residents have benefited from access to community life." *Id.* at 92.

<sup>57</sup> Cindy Lee Soper, *The Fair Housing Act Amendments of 1988*, 37 St. Louis U. L.J. at 1041; Robert L. Schonfeld, "Five-Hundred-Year Flood Plains," 16 Fordham Urb. L.J. at 9-10.

<sup>58</sup> *Id.*

<sup>59</sup> As one City Council president stated, "I don't think anybody is against group homes . . . . But we would like to control them. . . . We want them in certain parts of the city where there is no direct contact with direct residential area." Jordana Hart, *Advocates for Disabled Persons Decry Medford Bar on Group Homes*, Boston Globe, Oct. 7, 1990, at 40; see also Mohamad Bazzi & Mae M. Cheng, *As the Debate About Facilities Intensifies, Activists and Advocates for the Disabled Face Off*, Newsday, Aug. 7, 1994, at 1 (statement of the president of the East Bayside Homeowners Association: "Personally, I'm opposed to all group homes in residential areas."); Mark Gillispie, *Convent in Maple Heights May Be Group Home*, Plain Dealer Rptr., June 18, 1994 (said one concerned neighbor about a group home for eight people with mental disabilities: "This house, from what I hear about it, is very dangerous because it's a bunch of lunatics. . . . I'll sign anything to get them out of there.").

<sup>60</sup> Michael Winerip, *Group Homes Are Invited Only to Leave*, N.Y. Times, Sept. 6, 1992, at 49 sec. 1 (describing a three year legal battle); Lynne Tuohy, *Battle for AIDS House Exacts Emotional Toll*, The Hartford Courant, June 13, 1992, at A1 (town lost nearly \$400,000 in legal fees; home closed for four years while legal battles were fought).

group homes for people with mental disabilities have been set afire on Long Island over the past fourteen years.<sup>61</sup>

### C Restrictive Zoning Ordinances

Opponents of community integration have used local zoning and regulatory laws with considerable success. The modern remnants of the historical biases against persons with disabilities survive today in many such laws. Zoning laws like that at issue here are common, facially-neutral regulations that communities apply to exclude group homes from their neighborhoods. Most jurisdictions designate "'single family residential'" zones for families only.<sup>62</sup> Most statutes permit unrelated persons to be a family, but only in small numbers (often five or fewer),<sup>63</sup> whereas related families can live together in unlimited numbers. Because group homes for people with disabilities sometimes comprise more than five unrelated people for programmatic and other reasons, they often do not meet the zoning definition of family.<sup>64</sup>

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<sup>61</sup> See Michael Winerip, *Group Homes Are Invited Only to Leave*, N.Y. Times, Sept. 6, 1992, at 49 sec. 1. One of those fires delayed the opening of a proposed group home for ten people with mental illness for six months. Prior to the fire, the house was picketed by people carrying signs that said, "No More Mental Motels." Peter Marks, *Unwelcome Neighbors Long Island a Leader in Thwarting Group Homes for Mentally Ill*, Newsday, May 20, 1990, at 5.

<sup>62</sup> Lester D. Steinman, *The Effect of Land-Use Restrictions on the Establishment of Community Residences for the Disabled*, 19 Urb. Law. at 2.

<sup>63</sup> Peter W. Salsich, Jr., *Group Homes, Shelters and Congregate Housing: Deinstitutionalization Policies and the NIMBY Syndrome*, 21 Real Prop. Prob. & Tr. J. 413 (Fall 1986).

<sup>64</sup> Many states have passed laws that preempt municipal zoning ordinances and provide that community residence for persons with disabilities can be placed in areas zoned for single family uses. Robert L. Schonfeld, "Five-Hundred-Year Flood Plains," 16 Fordham Urb. L.J. at 11-12 n.41. Because nearly all of these statutes also limit the number of people that may live in group homes permitted in a single family residential zone, they provide only limited relief from local restrictive definitions of family.



In addition, some municipalities require groups of unrelated people exceeding the specified number to obtain special-use permits or certificates of occupancy before locating in a single family residential zone, which related families are not required to do.<sup>65</sup> These procedures are burdensome, time consuming, expensive, and public; they delay and often prevent access to community housing. They provide communities a public forum to exploit the persistent stigma attached to many disabilities, such as mental illness or AIDS, and are thus particularly invasive and onerous for people with disabilities.

States and municipalities also have enacted zoning ordinances that explicitly impose requirements on housing for people with disabilities that are not placed on others.<sup>66</sup> Dispersion or "radius" requirements, for example, prohibit homes for people with disabilities from locating too close to one another. They usually specify the required distance -- ranging anywhere from 300 to 5000 feet -- between similar residences, and are enshrined in the laws of many states.<sup>67</sup> These kinds of limitations are said to prevent ghettoizing people with disabilities, supposedly working to distribute their housing throughout the community. More often than not, however, they simply foreclose affordable housing for people with disabilities.

<sup>65</sup> See, e.g., *Oxford House, Inc. v. City of Virginia Beach*, 825 F. Supp. 1251 (E.D. Va. 1993); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992); *Stewart B. McKinney Found. v. Town Plan & Zoning Comm'n*, 790 F. Supp. 1197 (D. Conn. 1992).

<sup>66</sup> See, e.g., *Potomac Group Home Corp. v. Montgomery County*, 823 F. Supp. 1285 (D. Md. 1993) (neighbor notification requirement); *Marbrunak, Inc. v. City of Stow*, 974 F.2d 43 (6th Cir. 1992) (extensive safety protections); *Horizon House Developmental Servs., Inc. v. Township of Upper Southampton*, 804 F. Supp. 683 (E.D. Pa. 1992) (1,000 feet spacing requirement), *aff'd mem.*, 995 F.2d 217 (3d Cir. 1993); *Familystyle of St. Paul, Inc. v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991) (limitation on placement); *Bangerter v. Orem City Corp.*, 797 F. Supp. 918 (D. Utah 1992) (two hour supervision); *Cason v. Rochester Hous. Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990) (requirement of proof of ability to live independently).

<sup>67</sup> Robert L. Schonfeld, "Five-Hundred-Year Flood Plains," 16 *Fordham Urb. L.J.* at 12-13 n.45.

The harshness and unacceptability of these measures becomes apparent if one substitutes another group that has been subject to discrimination - blacks - for developmentally disabled persons in these anticoncentration provisions. What emerges is a zoning provision that, in order to prevent the deleterious effects of racial segregation, prohibits any black household from being sited within a specified distance from another black household. Although this measure might achieve racial integration, this is not a policy that comports with the individual liberties that are to be promoted by such regulations.<sup>68</sup>

Some states and municipalities regulate group homes for people with disabilities by requiring home operators to obtain a license to operate the facility and/or by requiring such homes to satisfy more stringent safety requirements than homes for non-disabled people, such as additional fire safety equipment, including sprinkler systems, fire-retardant wall and floor coverings, lighted exit signs, push bars on all doors and an excessive number of fire extinguishers. Municipalities apply these requirements to all community housing for people with disabilities, without "individualizing [their] requirements to the needs or abilities of the people [they] purportedly sought to protect."<sup>69</sup>

Therefore, zoning laws, such as that at issue here, are among the greatest barriers to community integration of people with disabilities. Congress intended to eliminate such practices unless they are justified by weighty health or safety concerns. Hence, the exemption at issue should be

<sup>68</sup> Martin Jaffe & Thomas P. Smith, *American Planning Ass'n, Siting Group Homes for Developmentally Disabled Persons* 12.

<sup>69</sup> Robert L. Schonfeld & Seth P. Stein, *Fighting Municipal "Tag-Team": The Federal Fair Housing Amendments Act and Its Use in Obtaining Access to Housing for Persons with Disabilities*, 21 *Fordham Urb. L.J.* 299, 326 (1994) (citing *Marbrunak, Inc. v. City of Stow*, 974 F.2d 43 (6th Cir. 1992) and *Potomac Group Home Corp. v. Montgomery County*, 823 F. Supp. 1285 (D. Md. 1993)).



limited to its terms and thereby accomodate the FHAA's purpose.

### CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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Dated: January 23, 1995

## APPENDICES

## APPENDIX A

### INTEREST OF *AMICI CURIAE*

*Amici curiae* are the principal national professional, advocacy and provider organizations dedicated to protecting the rights of and providing services to people with disabilities. *Amici* thus have substantial knowledge and experience regarding the history of discrimination against people with disabilities and the extent to which that discrimination continues to be present today. *Amici* are also knowledgeable and experienced in the need for and benefits of community integrated living arrangements for those with disabilities and the effect exclusionary zoning ordinances have on such a policy. These issues are relevant to the determination of whether local zoning ordinances are exempt from scrutiny under federal housing laws as they apply to people with disabilities.

#### Advocacy, Inc.

Advocacy, Inc. is the protection and advocacy agency designated by the Governor of the State of Texas to protect the rights of persons with mental and/or physical disabilities in areas such as employment, education, and housing. Advocacy, Inc. has represented thousands of Texans with disabilities, including residents of a group home for adults with mental retardation before the United States Supreme Court. See *City of Cleburne v. Cleburne Living Center*, 474 U.S. 432 (1985). Since 1981, Advocacy, Inc., in conjunction with persons with disabilities and family members of persons with disabilities, has identified and advocated the need for community integration in housing.

#### American Association on Mental Retardation

The American Association on Mental Retardation ("AAMR") is the nation's oldest and largest interdisciplinary organization of professionals who work exclusively in the



field of mental retardation. Today, AAMR has 9,500 members who work with people with mental retardation in both institutional and community settings. AAMR develops human resources and leadership, promotes high quality services and supports that enable full community inclusion and participation, encourages research and its dissemination and application, advocates for progressive public policies and influences public awareness and attitudes. The expressed mission of the AAMR is to enhance life opportunities and choices of people with mental retardation and their families, by exchanging information that advances the skills and knowledge of individuals in the field.

#### **American Counseling Association**

The American Counseling Association ("ACA") is an organization of counseling professionals who work in educational, health care, residential, private practice, community agency, government and business and industry settings. The mission of the ACA is to enhance human development throughout the life span and to promote the counseling profession. The case before the Court is of special interest to the over 13,000 members of ACA divisions of Mental Health Counselors and Rehabilitation Counselors, as well as the thousands of other ACA members who are engaged in the assisted living programs, education and training of mentally retarded persons.

#### **American Network of Community Options and Resources**

The American Network of Community Options and Resources ("ANCOR") (formerly the National Association of Private Residential Resources) is a nationwide association of over 550 private, non-profit, for-profit and family care agencies that together provide support and services to more than 50,000 people with disabilities. ANCOR has over twenty-five years of proven leadership representing private providers at the federal level. The membership serves persons of all ages, income levels, sexes and races in urban, rural and suburban areas -- supporting people wherever

they live and work. Most member agencies support group homes, apartments and other supported living arrangements. They prefer to establish homes in stable residential communities in order to best meet the needs of the people they support. The number of persons living in the homes varies depending upon their particular needs and preferences. Consequently, the case before the Court will have substantial impact on ANCOR's members.

#### **The Arc**

The Arc is the largest national voluntary organization in the United States devoted solely to the welfare of the more than seven million people with mental retardation. Together, more than 1,200 state and local chapters of The Arc work to ensure that people with mental retardation can realize the opportunity to live, learn, work and play in their communities. Since its inception, The Arc has vigorously challenged attitudes and public policy, based on false stereotypes, that have authorized or encouraged segregation of people with mental retardation in virtually all areas of life. It is the experience of The Arc that people with mental retardation have the capability to enjoy and contribute to the life of the community. For over a decade, a top priority of The Arc has been to make community-based supports, including an appropriate variety of housing options, available to people with mental retardation. The issue before this Court relates directly to the rights of persons with mental retardation seeking to live in community-based settings and is one of great interest to The Arc and its members.

#### **Arc-Allegheny**

Arc-Allegheny is a non-profit corporation that provides advocacy and other services to persons with mental retardation and their families and is the largest provider of such services in Allegheny County, Pennsylvania, which comprises the Pittsburgh metropolitan area. Members of Arc-Allegheny include individuals with mental retardation,

their parents and other family members, and individuals and professionals concerned about persons with mental retardation. For nearly forty years Arc-Allegheny has worked to secure and protect the legal rights of citizens with mental retardation.

#### **The Arc of Pennsylvania**

The Arc of Pennsylvania is a non-profit corporation created to advocate on behalf of persons with mental retardation in Pennsylvania. Members of The Arc include individuals with mental retardation, their parents and other family members, and individuals and professionals concerned about persons with mental retardation. The Arc long has acted on behalf of citizens with mental retardation and worked to ensure that the rights of such persons are protected. The issue before this Court relates directly to the rights of persons with mental retardation seeking to live in community-based settings and is one of great interest to The Arc and its members.

#### **Autism National Committee, Inc.**

The Autism National Committee, Inc. was founded in 1990 to advocate for the civil rights and human rights of all persons with autism, Pervasive Development Disorder and related disorders of communication and behavior. Through grassroots organizing, national level lobbying efforts, technical assistance in the development of organizations and services based on positive approaches, a national newsletter and an annual conference, the Committee assists people with autism, families, educators and other professionals toward their goal of full community inclusion.

#### **Autism Society of America**

The Autism Society of America ("ASA") was founded in 1965, and today is a leading national agency devoted to education, information and advocacy for the autism community. Operating through over 200 chapters

nationwide representing over 16,000 members, the ASA works on local, state and federal levels to increase public awareness of the disability and the unique needs of individuals with autism to the medical, education, research and service sectors. The mission of the ASA focuses on promoting lifelong access and opportunity for all individuals with autism to be fully participating, included members of their community. The case before the Court will directly impact the ASA's ability to carry out its mission.

#### **California Alliance for the Mentally Ill**

The California Alliance for the Mentally Ill ("CAMI") represents some 14,000 California residents who are parents, siblings, spouses and children of the severely mentally ill or are mentally ill themselves -- some of whom are dually diagnosed as neurobiologically disordered and recovering from substance abuse. The CAMI works on behalf of people with severe mental illness who are being successfully treated and who are a prime target of neighbors who fear the establishment of congregate housing for them.

#### **Center for Public Representation**

The Center for Public Representation is a public interest law firm with offices in Northampton and Newton, Massachusetts, which provides legal services to individuals with mental and physical disabilities. Among its other functions, the Center is the designated protection and advocacy program for individuals with mental illness in Massachusetts. Many of the Center's clients live in or seek to live in community based supported living situations. The Center has represented and currently represents individuals who have been denied the right to live in the communities of their choice because of zoning or other land-use regulations which limit their rights. The outcome of the case before the Court will have a substantial impact on the Center's clients.



### **Disability Rights Education and Defense Fund, Inc.**

Disability Rights Education and Defense Fund, Inc. ("DREDF") is a national disability civil rights organization dedicated to securing equal citizenship for Americans with disabilities. Established in 1979, DREDF pursues its mission through education, advocacy and law reform efforts. In its efforts to promote the full integration of citizens with disabilities into the American mainstream, DREDF has represented and/or assisted hundreds of people with disabilities who have been denied their rights and excluded from opportunities, including access to appropriate and affordable housing because of false and demeaning stereotypes, and has fought to ensure that people with disabilities have the remedies necessary to vindicate their right to be free from discrimination.

### **Disability Rights in Voter Empowerment**

Disability Rights in Voter Empowerment is a nonpartisan advocacy group focused on improving the quality of life for people with disabilities through the electoral process.

### **The Joseph P. Kennedy, Jr. Foundation**

The Joseph P. Kennedy, Jr. Foundation, established in 1946 by Ambassador and Mrs. Joseph P. Kennedy, honors their oldest son who was killed in World War II. The Foundation has two major objectives: to improve the way society deals with its citizens who have mental retardation; and to help identify and disseminate ways to prevent the causes of mental retardation. The guiding strategy of the Foundation is to use its funds in areas where a "multiplier effect" can be achieved through development of innovative models for services and supports to persons with mental retardation and their families, or for highly selective demonstrations of the prevention of mental retardation. The Foundation operates by providing "seed" funding that encourages new methods of service and supports, and

through use of the Foundation's influence to promote public awareness of the needs of persons with mental retardation and their families.

### **Legal Action Center**

The Legal Action Center is a non-profit policy and law organization that advocates on behalf of persons with past or current drug and alcohol problems and persons with HIV/AIDS. The Center provides direct legal assistance to individuals and families affected by addiction and HIV/AIDS, advises the treatment programs and community-based organizations that serve them, and advocates on their behalf with policymakers. Its aim is to fight discrimination that these individuals face in housing, employment and benefits and to dramatically expend prevention and treatment services. The outcome of the case before the Court will have a substantial impact on the Center's clients.

### **National Alliance for the Mentally Ill**

The National Alliance for the Mentally Ill ("NAMI") is a national grassroots advocacy organization of families of persons with serious mental illness and persons with serious mental illness themselves. Composed of over 1,000 local affiliates and 140,000 members, NAMI's goals are to advance community-based treatment and services for persons with serious mental illness and provide public education about serious mental illnesses. This includes supportive housing which is a critical component in the continuum of community-based services required by persons with these disorders. The outcome of the case before the Court will have a substantial impact on members of the NAMI.

### **National Association of People with AIDS**

The National Association of People with AIDS ("NAPWA") is dedicated to improving the lives of people with HIV/AIDS at home, in the community and in the



workplace. Founded in 1983 by a coalition of people with AIDS, NAPWA serves as a national information resource and "voice" for the needs and concerns of all Americans infected and affected by HIV. NAPWA is particularly committed to ensuring that people with HIV/AIDS understand their treatment options and have access to quality health care. The outcome of the case before the Court will have a substantial impact on NAPWA's members.

#### **National Association of Protection & Advocacy Systems**

The National Association of Protection and Advocacy Systems ("NAPAS"), founded in 1981, is a membership organization for the nationwide system of protection and advocacy agencies. Protection and advocacy systems are mandated under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 6000-6083 (1988 & Supp. V 1993) and related statutes, to provide legal representation and related advocacy services on behalf of all persons with disabilities. NAPAS provides protection and advocacy systems with training and technical assistance and represents their interests before the Executive and Legislative Branches of Government. NAPAS is deeply concerned that appropriate housing in the community be made available for persons with disabilities because its members have a statutory mandate to advocate for the full inclusion of persons with disabilities in all areas of life.

#### **National Association of State Mental Health Program Directors**

The National Association of State Mental Health Program Directors ("NASMHPD") is comprised of state and territorial agencies that administer public programs for the mentally disabled in the United States. Founded in 1959, the member agencies of NASMHPD operate the largest mental disability system in the world. The primary focus of the systems managed by the state mental health agencies is on services to people with serious mental disabilities, including assuring the availability of housing.

#### **National Community Mental Healthcare Council**

National Community Mental Healthcare Council ("NCMHC") represents community-based mental health agencies, state associations of such agencies and other affiliated provider groups. NCMHC is dedicated to the support and advancement of community-oriented mental health and mental health related services that promote the holistic enhancement of individual well being. Fundamental to its identity is the shared commitment to serve people who require direct or indirect public financial support for accessing services. The purposes of the NCMHC, as outlined by its bylaws, are to: promote a unified network of community mental health care providers, organizations and individuals on the national, state and local levels; provide national representation, leadership and direction for policy development and program implementation; promote the concept, financing and delivery of community-based mental health services; promote the delivery of quality care through education, information and training programs; provide national leadership by supporting research and design of models for both the promotion of mental health and the prevention of mental illness; promote increased public understanding of mental health; and promote increased public concern for mental illness.

#### **National Mental Health Association**

National Mental Health Association ("NMHA") is the national citizens voluntary advocacy organization working with and on behalf of people with mental illness. With 600 affiliates in forty-three states and the District of Columbia, NMHA has worked toward eliminating discrimination against people with mental illness since 1909. The alleviation of stigma and public misconceptions about mental illness and the people who have them is a continuing emphasis of NMHA and its affiliates. Part of NMHA's mission is to secure access to housing in communities for people with mental health treatment needs across the United States. The outcome of the case before the Court will have a

substantial impact on NMHA, its affiliates and the community members which they serve.

#### **The National Organization for Rare Disorders**

The National Organization for Rare Disorders ("NORD") is a federation of national voluntary health agencies and individuals dedicated to the identification, treatment and cure of rare "orphan diseases." NORD's membership is comprised of approximately 135 national support agencies devoted to specific rare disorders and more than 80,000 individuals. A rare disorder is defined under the Orphan Drug Act of 1983 as a disease or condition that effects fewer than 200,000 Americans. There are approximately 5,000 of these diseases cumulatively affecting an estimated twenty million Americans. Community-based residential living that promotes independence for severely disabled individuals with rare mental and physical disorders is of vital importance to many NORD members whose only alternative would be institutionalization in the absence of effective prevention, treatment or cure.

#### **National Parent Network on Disabilities**

The National Parent Network on Disabilities ("NPND") is a national organization comprised of 168 organizations that serves parents of children, youth and adults with any type of disability. NPND was established to provide a presence and national voice for parents of children, youths and adults with special needs. NPND shares information and resources in order to promote and support the power of parents to influence and affect policy issues concerning the needs of people with disabilities and their families. The NPND supports the rights of unrelated individuals with disabilities to live together in residential neighborhoods.

#### **New York Lawyers for the Public Interest, Inc.**

New York Lawyers for the Public Interest, Inc. ("NYLPI"), through its Disability Law Center and its *pro*

*bono* clearinghouse of sixty-eight private law firms and corporate law departments, advocates for the rights of persons with disabilities across New York State. NYLPI focuses on protecting the rights of persons with disabilities in housing, including advocating for integrated communities and against exclusionary zoning. NYLPI has appeared as *amicus curiae* and represented *amici curiae* before this Court in several cases involving the rights of persons with disabilities.

#### **Phoenix House**

Phoenix House is the largest private, non-profit drug abuse services agency in the country and provides treatment for approximately 1,800 adults and adolescents nationwide. A pioneer in the development of modern drug abuse treatment, Phoenix House was among the first to adopt self-help methods that make the individual the focus of the treatment and address the underlying causes of drug abuse.

Since its inception in 1967, Phoenix House has treated more than 60,000 people and has introduced model programs for drug prevention and intervention. Phoenix House has also conducted much of the research documenting the effectiveness of drug-free therapy and has trained clinicians responsible for drug treatment and intervention programs throughout the country. Today, Phoenix House operates fourteen long-term residential and outpatient facilities -- ten in the New York area and four in California.

#### **Spina Bifida Association of America**

The Spina Bifida Association of America ("SPAA") is a national organization representing the needs of individuals with spina bifida, their family members, healthcare providers, professionals and interested members of the general public. SBAA's purposes are: to provide information related to spina bifida in the areas of education, legislation, education, transportation and housing and to



help fund research into the causes, effects and treatment of spina bifida. This case is of special interest to the over 35,000 members of the SBAA, as well as parents, educators, therapists, doctors and other professionals who are engaged in promoting transition to independent living for individuals with disabilities because of discrimination against people with disabilities in regard to housing choices/options. SBAA believes that living in integrated, residential neighborhoods is a fundamental right for people with disabilities.

#### **Sunrise Terrace, Inc.**

Sunrise Terrace, Inc., doing business as Sunrise Retirement Homes and Communities ("Sunrise"), is the largest developer and operator of free-standing assisted living residences in the United States. Sunrise presently manages approximately forty assisted living communities for the elderly across the United States, serving over 2,000 residents. In addition, Sunrise provides development, management and consulting services to private and governmental elderly housing providers.

#### **World Institute on Disability**

The World Institute on Disability ("WID") was established twelve years ago to combat "handicappism." WID's goal is to use research, public education, training and model program development as a means to create a more accessible and supportive society for all people -- disabled and nondisabled alike. WID works internationally to support the integration of people with disabilities into the communities where they live. WID is a unique "think tank" on disability policy staffed by people with disabilities, including two federally funded research and training centers on public policy and independent living and on personal assistance services, an international division and divisions addressing policy on technology access and on AIDS. Integrated housing is a critical, fundamental issue for people with disabilities, just as it is for nondisabled people.

### **Appendix B State Statutes Adopting Policy of Community Residential Living**

Cal. Welf. & Inst. Code § 5115 (West 1984) ("mentally . . . handicapped persons are entitled to live in normal residential surroundings . . .").

Colo. Rev. Stat. § 31-23-303(2)(a) (1990) ("establishment of state-licensed group homes for . . . developmentally disabled persons is a matter of statewide concern").

Fla. Stat. Ann. § 393.062 (1993) ("greatest priority shall be given to the development and implementation of community-based residential placements").

Haw. Rev. Stat. § 333E-1(7) (Michie 1991)  
("[d]einstitutionalization of the developmentally disabled is a major goal of the [s]tate").

Idaho Code § 67-6530 (1989) ("mentally . . . handicapped . . . persons are entitled to live in normal residential surroundings . . .").

La. Rev. Stat. Ann. § 28:476 (West 1989) ("mentally . . . handicapped persons are entitled to live in the least restrictive environment in their own community and in normal residential surroundings").

Mont. Code Ann. § 53-20-101(1), (2) (1993) ("secure for each person who may be developmentally disabled such treatment and habitation . . . in a community-based setting").

N.C. Gen. Stat. § 168-20 (1987) ("policy of this [s]tate to provide handicapped persons with the opportunity to live in a normal residential environment").



### Appendix C

#### Scientific Literature Demonstrating Benefits of Community Homes for People with Mental Retardation

James W. Conroy et al., 1990 *Results of the CARC v. Thorne Longitudinal Study* (Report No. 10), Connecticut Department of Mental Retardation 40-43, 55, 66 (Jan. 1991). Results of the Longitudinal movement from large congregate setting to small community setting showed increase in adaptive behavior, societal interaction, valued employment, quality of life, and family satisfaction).

James W. Conroy & Valerie J. Bradley, Temple University Developmental Disabilities Center, Philadelphia, Human Services Research Institute, Boston, *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis* (Mar. 1985) (A five year study of the impact of deinstitutionalization of people from Pennhurst Center (86% were labeled severely retarded) into small community living arrangements (ranging from one to eight with an average of three) showed significant increase in adaptive behavior -- nearly ten times greater than the growth displayed by matched people still at Pennhurst, a marked decrease in dependency, and a significant increase in happiness in most aspects of their lives).

John Lord & Alison Pedlar, *Life in the Community: Four Years After the Closure of an Institution*, 29 *Mental Retardation* 213, 219 (1991) (study of life experiences of eighteen people four years after deinstitutionalization where all but two moved to a group home found that virtually everyone had progressed in terms of skills development, and family members reported that their relative was generally happier and responding positively to the stimulation of community living).

Sherri Larson & Charlie Lakin, University of Minnesota Institute on Community Integration, *Deinstitutionalization of Persons with Mental Retardation: The Impact on Daily Living Skills* (Mar. 1989) (concluded based on eighteen studies that

people who move from state institutions to small community settings experience increases in adaptive behavior).

Sheryl A. Larson & K. Charlie Lakin, University of Minnesota Institute on Community Integration, *Parent Attitudes About Their Daughter's or Son's Residential Placement Before and After Deinstitutionalization* (Nov. 1989) (citing R.H. Horner et al., University of Oregon, Specialized Training Program of the Center on Human Development, *An Activity-Based Analysis of Deinstitutionalization: The Effects of Community Re-Entry on the Lives of Residents Leaving Oregon's Fairview Training Center* (1988)).

B.K. Hill & R.H. Bruininks, University of Minnesota, Center for Residential and Community Services, *Family Leisure and Social Activities of Mentally Retarded People in Residential Facilities* (1981) (referring to substantial evidence that for persons with all levels of mental retardation, moving to a community setting results in improved adaptive behavior and increased social participation).

Timothy M. Cook, *The Americans With Disabilities Act: The Move to Integration*, 64 *Temp. L. Rev.* 393, 455 (1991) (citing Gary B. Seltzer, *Community Residential Adjustment: The Relationship Among Environments, Performance and Satisfaction*, 85 *Am. J. Mental Deficiency* 624 (1981) (finding that community residences are more oriented toward individual autonomy and decisionmaking)).